IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4129 of 2006
TO
FIRST APPEAL NO. 4144 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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EXECUTIVE ENGINEER & 2 - Appellant(s)
Versus
PARSANBEN VARADHBHAI - Defendant(s)

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Appearance :
MR LR POOJARI, AGP for Appellant(s) : 1 - 3.
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 16/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Civil Procedure Code, 1908, the appellants have challenged the legality of common judgment and award dated February 26, 2004 rendered by the learned Joint District Judge, 2nd Fast Track Court, Rajpipla at Bharuch in Land Acquisition Reference Case Nos. 333 to 339 of 1993 and Land Acquisition Reference Case Nos. 1100 to 1108 of 1992, by which the Reference Court has awarded in all compensation to the claimants at the rate of Rs.1200/- per Are for their acquired lands.

2. The Executive Engineer, Karjan Project, Division No.5, Rajpipla proposed to the State Government to acquire lands of Village – Virsangpura, Taluka – Nandod, District – Bharuch for the public purpose of Karjan project. On perusal of the said proposal, the State Government was satisfied that the lands of Village – Virsangpura were likely to be

needed for the said purpose. Therefore, Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on December 01, 1988. Another proposal for acquiring lands of Village- Virsangpura for the said purpose was also made by the Executive Engineer, Karjan Project, Division No.5, Rajpipla and, therefore, another Notification issued under Section 4(1) of the Act was published in the Official Gazette on December 08, 1988. The land owners were served with the notice under Section 4(1) of the Act. They had opposed the proposed acquisition. After considering their objections, two separate reports under Section 5A(2) of the Act were forwarded.

3. On consideration of those reports, the State Government was satisfied that the lands of Village – Virsangpura which were specified in the Notifications published in the Official Gazette on December 01, 1988 and December 08, 1988 were needed for public purpose of Karjan project. Therefore, two declarations were made under Section 6 of the Act, which were published in the Official Gazette on July

27, 1989 and August 03, 1989. The interested persons were, thereafter served with the notices for determination of the compensation payable to them. In one case award under Section 11 of the Act was made on January 30, 1990, by which the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs. 280/- per Are for irrigated lands and Rs. 240/- per Are for non irrigated lands, whereas in another case, the award under Section 11 of the Act was made on January 31, 1990 by which the claimants were offered compensation at the rate of Rs. 280/- per Are for irrigated lands and Rs. 240/- per Are for non irrigated lands. In both the cases, the claimants were of the opinion that the offer of compensation made to them by the Special Land Acquisition Officer was totally inadequate. Therefore, applications under Section 18 were submitted requiring the Special Land Acquisition Officer to refer the cases to the Court for the purpose of determining just amount of compensation payable to them. Accordingly, the references were made to the District Court, Bharuch at Rajpipla, and they were registered as noted earlier.

4. On behalf of the claimants witness Khatriya Kikariya was examined at Exhibit – 11. Over and above stating that the lands acquired were highly fertile and that each claimant was earning substantial income from the sale of the agricultural produces, the said witness produced previous award of the Reference Court relating to the lands of this very village at Exhibit – 10 in support of the claim of the claimants for enhanced compensation. The witness further stated in his testimony that the lands of Village – Virsangpura and lands of Village – Kumashgam were similar in all respects including quality. The witness examined on behalf of the claimants was cross-examined by the appellants but nothing substantial could be elicited.

5. On behalf of the appellants no witness was examined nor any documentary evidence was produced for consideration of the Reference Court.

6. On appreciation of the evidence adduced by the claimants, the Reference Court was of the opinion

that previous award of the Reference Court relating to the lands of this very village was relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands subsequently acquired from this village. After placing reliance on the previous award of the Reference Court, the Reference Court has awarded compensation at the rate of Rs. 1200/- per Are by impugned judgment, giving rise to these appeals.

7. This Court has heard Mr. L.R. Poojari, learned Assistant Government Pleader for the appellants. From the record of the case it is evident that the evidence tendered by witness - Khatriya Kikariya at Exhibit – 11 was almost allowed to go unchallenged. The record does not indicate that the claimants had claimed enhanced compensation on yield basis or on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court relating to the lands of this very village, which was produced at Exhibit – 10. Exhibit – 10 indicates that lands of village –

Virsangpura and village – Kumashgam were acquired by the State Government pursuant to the publication of Notification issued under Section 4(1) of the Act in the Official Gazette on August 11, 1983. Exhibit- 10 further shows that the Reference Court had awarded compensation to the claimants at the rate of Rs. 900/- per Are. It may be noted that Notification issued under Section 4(1) of the Act with reference to the previous acquisition was published in the Official Gazette on August 11, 1983 whereas in the instant case, it was published in the Official Gazette on December 01, 1988 and in view of the time gap of about 5 years, the Reference Court has granted rise in price of the lands to the claimants at the rate of 10% p.a. On re-appreciation of the evidence produced by the claimants, this Court is of the opinion that the Reference Court has recorded correct findings of fact to which settled principle of law have been applied. No error could be pointed by the learned Assistant Government Pleader necessitating interference of this Court with the award impugned in the instant appeals. The learned Assistant Government Pleader could not persuade this Court to take a view

different than the one which is taken by the Reference Court on appreciation of evidence. Under the circumstances, the appeals are liable to be dismissed.

8. For the foregoing reasons, the appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this order as early as possible.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

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